

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1588 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

GOPI LONGOMAL TALWANI

Versus

VAKLA HARDAS AHIR

Appearance:

MR RD DAVE for Petitioner

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 13/01/2003

ORAL JUDGEMENT

1. This Revision Application is filed against an order of learned Civil Judge (SD), Junagadh, passed on 30th August, 1999, below Application Exhibits 9, 16 and 27 in Regular Dharkast No. 3/1996. Present petitioner being judgment credit filed the above said execution proceedings against the present opponents for the

recovery of amount as disclosed by the record. The recovery amount is shown as Rs.21,904.75 ps. The judgment debtors appear to have filed the First Appeal and obtained conditional stay for depositing the amount but failed to deposit the same. Therefore, an application Exh.9 for the arrest of the judgment debtor No.2 i.e. present opponent No.2 was filed under O.21 R.11(a) of the Civil Procedure Code and came to be granted by learned Civil Judge, Junagadh vide his order dated 2nd November, 1996. It appears that thereafter said Application Exh.9 was not pressed. Again Application Exh. 16 and 27 came to be filed of the same nature and came to be rejected by the learned Civil Judge (SD), Junagadh, vide impugned order. Against which this Revision Application is preferred.

2. Learned Advocate for the petitioner Mr. Rajesh D. Dave was heard at length. Learned Advocate submitted that earlier while granting the request of the judgment creditor, reasons are given by the learned Judge and the reasons given in the impugned order are absolutely contrary. Judgment debtor No.2 is avoiding execution proceedings and it has been difficult to recover the amount from him since the decree could not effectively be executed against original judgment debtor No.2. It was submitted that the application ought to have been granted so as to satisfy the decretal amount which according to the learned advocate would be possible if arrest of the judgment debtor No.2 is directed. Learned Advocate submitted that the learned Judge failed to exercise jurisdiction vested in him in rejecting this application.

3. So far as the merits of this Revision Application is concerned, the learned Judge in the impugned order has come to the conclusion on the question of fact that the evidence on record was not sufficient that the judgment debtor No.2 was avoiding the execution proceedings and that there was no evidence to denote that the judgment debtor No.2 had disposed of his immovable property with a view to avoid the payment of decretal amount. These are the conclusions based on evidence on record and on facts which cannot be disturbed in revisional jurisdiction of this Court. It can hardly be a ground to entertain this Revision Application that earlier this very application was granted by the same court. Neither it could be said that the court below failed to exercise the jurisdiction vested in it nor it could be said that the trial court committed any material irregularity. Not only that this Revision Application is further barred by the proviso of Amending Act and even if the order is passed in favour of the present petitioner, that is to say, if the order of

warrant of arrest is directed, then even it would not dispose of the execution proceedings. The proviso is wide enough to cover all the proceedings and therefore this Revision Application would not be maintainable on that score also.

4. In this view of the matter, this Revision Application stands dismissed summarily.

(J.R. Vora, J.)

p.n.nair